APPENDIX.

STATUTES.

Sec. 609, Revenue Act of 1932.

TAX ON SPORTING GOODS—There is hereby imposed upon the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to 10 per centum of the price for which so sold: Tennis rackets, tennis racket frames, and strings, nets, racket covers and presses, skates, snowshoes, skis, toboggans, canoe paddles, polo mallets, baseball bats, gloves, masks, protectors, shoes and uniforms, football helmets, harness and uniforms, basketball goals and uniforms, golf bags and clubs, lacrosse sticks, balls of all kinds, including baseballs, footballs, tennis, golf, lacrosse, billiard and pool balls, fishing rods and reels, billiard and pool tables, chess and checker boards and pieces, dice, *games and parts of games (except playing cards and children's toys and games);* and all similar articles commonly or commercially known as sporting goods. (Italics ours.)

R. S. 3226, as amended by Sec. 807, Revenue Act of 1936; 26 U. S. C. A. 1672-3; Int. Rev. Code §3772.

SUITS FOR REFUND.

(a) LIMITATIONS—(1) CLAIM. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner, according to the provisions

of law in that regard, and the regulations of the Secretary established in pursuance thereof.

(2) TIME. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates. Any consideration, reconsideration, or action by the Commissioner with respect to such claim following the mailing of a notice by registered mail of disallowance shall not operate to extend the period within which suit may be begun.

(b) PROTEST OR DURESS. Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

R. S. 3228, as amended; 26 U. S. C. A. 1433.

PERIOD OF LIMITATION UPON REFUNDS AND CREDITS —All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as otherwise provided by law in the case of income, estate, and gift taxes, be presented to the Commissioner within four years next after the payment of such tax, penalty, or sum. The amount of the refund (in the case of taxes other than income, estate, and gift taxes) shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

Rulings and Regulations.

S. T. 567; Regulations 46, Article 55; Internal Revenue Bulletin XI-2 C. B. 481.

Taxability of jig-saw puzzle as a game.

Advice is requested concerning the taxability, under section 609 of the Revenue Act of 1932, of jig-saw puzzles as games.

The word "games", as used in section 609 of the Revenue Act of 1932, does not mean the games themselves but the instrumentalities used in playing them. (See *Baltimore Talking Board Co.* v. *Miles,* 280 Fed. 658, T. D. 3401, C. B. 1-2, 297.) Under the strict interpretation of that word all picture puzzles could be classified as games and held to be taxable. However, children's games are specifically exempted from the tax. It would follow that if the picture puzzles or games, are of the type ordinarily designed for the use of children, they are not taxable.

A jig-saw puzzle containing comparatively few pieces may properly be considered as one so simple as to warrant classification as a children's game and exempt from the tax. Where such puzzles contain many pieces they become more complex and are taxable on the ground that they are designed for use by adults. For revenue purposes, it is held that if the jig-saw puzzle contains 50 pieces or less, it is a children's game and not subject to the tax. If the jig-saw puzzle contains more than 50 pieces it is subject to the tax as a game under section 609 of the Revenue Act of 1932.

L. O. 1116; Internal Revenue Bulletin III-1 C.B. 350, 358.

Except as modified by section 252, which has no application to the instant case, the language of section 3228, Revised Statutes, that all claims for the refunding of any tax must be presented to the Com-

missioner within four years next after payment of the tax sought to be refunded, may be construed to permit the filing of separate claims for refund of a single tax or portion thereof, so long as all the claims are filed within the four-year period of limitations. To permit the filing of additional claims setting up new grounds for refund, as amendments of an original claim, with no limit as to the time for such filing, after the original claim has been decided and after the statutory period has expired, would to a large extent nullify the intent of Congress in providing a statute of limitations for filing of claims. On the other hand, no hardship is imposed upon the taxpayer in requiring him to file new claims if he wishes to set up different grounds for refund within the four-year statutory period, for the regulations already require his claim or any amendment to be made under oath, and the most convenient method of complying with that and other requirements of the regulations is to use either the form provided by the department for that purpose or one prepared by the claimant himself sufficiently like Form 843 to comply with the regulations.

Rule 52, Federal Rules of Civil Procedure.

Findings by the Court.

(a) Effect. In all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity

of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court.

(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.